United Nations A/61/612

General Assembly

Distr.: General
6 December 2006

Original: English

Sixty-first session
Agenda item 117
Programme budget for the biennium 2006-2007

Conditions of service and compensation for officials other than Secretariat officials

Members of the International Court of Justice

Judges of the International Criminal Tribunal for the Former Yugoslavia

Judges of the International Criminal Tribunal for Rwanda

Ad litem judges of the International Criminal Tribunal for the Former Yugoslavia

Ad litem judges of the International Criminal Tribunal for Rwanda

Report of the Advisory Committee on Administrative and Budgetary Questions

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the conditions of service and compensation for the members of the International Court of Justice (ICJ), the judges of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (ICTY), the judges of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 (ICTR) and the ad litem judges of ICTY and ICTR (A/61/554). During its consideration of the report, the Committee met with representatives of the Secretary-General, who provided additional information and clarification. The Committee also had an exchange of

06-64568 (E) 081206

views on this matter with the Registrar, the Chief Administrative Officer of the International Tribunal for the Former Yugoslavia and the Deputy Prosecutor of the International Criminal Tribunal for Rwanda.

2. The report of the Secretary-General is submitted pursuant to the decision of the General Assembly to review the conditions of service and remuneration of the members of ICJ, the judges and the ad litem judges of ICTY and ICTR at its sixty-first session (General Assembly resolution 59/282, sect. III). In that resolution, the Assembly requested the Secretary-General to submit a comprehensive report including proposals for a mechanism of remuneration based on market exchange rates and local retail price fluctuations that limits the divergence of such remuneration from that of comparable positions of seniority within the United Nations system, on the protection of pensions in payment to former judges and their survivors and on the differences between the pension benefits of the judges of ICTY and ICTR, on the one hand, and the members of the ICJ, on the other.

3. The report of the Secretary-General provides background and evolution of remuneration (paras. 3-26), other conditions of service (paras. 27-45) and retirement benefits (paras. 46-75) of the members of ICJ, as well as of the judges and the ad litem judges of ICTY and ICTR. In section IV of the report, the Secretary-General provides an analysis and makes recommendations in respect of remuneration, including adjustments for currency fluctuations and cost of living (paras. 76-84), other conditions of service, including pensions (paras. 85-134), and the timing of the next comprehensive review (para. 136). This section also contains technical explanations on the post-adjustment system, the floor-ceiling mechanism and the pension adjustment system (paras. 100-125). The financial implications for the 2006-2007 programme budget, should the General Assembly approve the proposals contained in the report, are provided in paragraph 135.

Remuneration

4. In accordance with the terms of General Assembly resolution 48/252 A, the system of floor-ceiling exchange rates, introduced by the International Civil Service Commission (ICSC) in 1987, is applied to the salaries of the members of ICJ in order to protect their emoluments against a weakening or strengthening of the United States dollar. Under this system, floor/ceiling rates are set at 4 per cent below and 4 per cent above the average exchange rate of the previous year. This system continues to be applied to the salaries of the members of ICJ and judges of ICTY and ICTR, serving in The Hague, which are converted to euros (previously Netherlands guilders). The Committee notes that the salaries of the judges of ICTR serving in Arusha are expressed in United States dollars; a floor/ceiling correction is therefore not required. A table of the monthly salaries of the judges serving in The Hague and Arusha is provided in the annex to the present report. In this connection, the Advisory Committee received additional information from the President of ICTR on the impact of the fluctuations of the United States dollar on purchasing power in Arusha.

5. In the previous report submitted by the Secretary-General to the General Assembly for its comprehensive review (A/C.5/59/2), the Secretary-General proposed to increase the annual salary to $177,000, a 10.6 per cent increase, taking into account a diminution of 4.35 per cent in real value of the salaries of judges

owing to the increase in the cost of living in the Netherlands and a 6.3 per cent increase in the salary scale approved by the General Assembly (General Assembly resolutions 57/285 and 58/266). The Advisory Committee had recommended acceptance of the proposal of the Secretary-General (A/59/557). However, the Committee had also pointed to a number of uncertainties with regard to the current system, given that the cost of living did not fluctuate evenly at all places where the judges of the International Court of Justice and the Tribunals sit. It had recommended that the Secretary-General be requested to make proposals for the future, which would take this factor into account. In section III, paragraph 8, of its resolution 59/282, the General Assembly requested the Secretary-General to submit a comprehensive report at its sixty-first session, including proposals for a mechanism of remuneration based on market exchange rates and local retail price fluctuations that would limit the divergence of such remuneration from that of comparable positions of seniority within the United Nations system. Pending its decision on the report requested, as an interim measure, the Assembly decided to increase the annual salary of the members of the Court and the judges and ad litem judges of the Tribunals by 6.3 per cent, to $170,080, with retroactive effect from 1 January 2005.

6. In the report under consideration (A/61/554, paras. 80-84), the Secretary-General proposed that Member States consider introducing a post adjustment mechanism similar to that applied to the salaries of Professional and higher categories. Under this system, the net remuneration is composed of a net base salary and a post adjustment amount, calculated on the basis of the post adjustment multiplier. Additional explanations on the post adjustment and floor-ceiling mechanisms are provided in paragraphs 100 to 116 of the report of the Secretary-General (A/61/554).

7. The Secretary-General indicates that the post adjustment multiplier as of September 2006 is 50.2 for the Netherlands and 38.6 for the United Republic of Tanzania. He proposes to use the current remuneration of the judges, which amounts to $170,080, as the net base salary, which would result in the following remuneration levels:

(United States dollars)

	Judges serving in	
	The Hague	*Arusha*
Annual net base salary	170 080	170 080
Post adjustment multiplier	50.2	38.6
Post adjustment amount	85 380	65 651
Proposed annual remuneration	255 460	235 731
Per cent increase	14.9%	38.6%
Proposed monthly remuneration	21 288	19 644
Current remuneration as of November 2006	18 523	14 173
Monthly difference	2 765	5 471

8. As shown in the table above, the proposals of the Secretary-General outlined in paragraphs 81 and 82 of his report (A/61/554) would lead to a net increase in

remuneration of some 14 and 33 per cent for judges serving in The Hague and in Arusha, respectively. **In the opinion of the Committee, the proposal of the Secretary-General, which uses the current net remuneration as the base salary, unduly inflates the remuneration calculated under a post adjustment system. It points out that the current net remuneration already includes a cost-of-living component (see para. 6 above; and A/45/7/Add.10).**

9. The Committee notes also that the base salary scale against which staff in the Professional and higher categories are paid is revised by ICSC from time to time, through the consolidation of post adjustment multiplier points into the base scale with a corresponding readjustment in the post adjustment multipliers on a no loss/no gain basis. **The Committee points out that what is proposed for the judges is different; a net increase is envisaged. It is up to the General Assembly to decide whether an increase should be provided, but the consolidation of points from post adjustment to base salary for staff, which is on a no loss/no gain basis, is not relevant to a proposal whereby an increase would result. The Committee points out further that the salaries of the members of ICJ, which is the principal judicial organ of the United Nations, are sui generis, and that the system of emoluments and conditions of service applicable to the members of the Court is distinct from that of any other in the United Nations system. The conditions of service of the members of the Court are to be determined by the General Assembly, in accordance with article 32 of the Statute of the International Court of Justice, and of the judges of the Tribunals, by their statutes (see art. 13 of the statute of ICTY and art. 12, para. 5, of the statute of ICTR).** In this connection the Committee recalls its observations on this subject in its report A/45/7/Add.10 (para. 12).

10. **In view of the above, the Committee recommends elaboration of alternative methods for adjusting remuneration according to market exchange rates and movement of the local cost-of-living index, with a view towards protecting the level of the remuneration, as requested by the General Assembly. The new proposals should be presented to the General Assembly at its sixty-second session.**

Other conditions of service

Education costs

11. The Secretary-General proposes to extend to the members of the Court and the judges of the Tribunals any increases to the level of the education grant (including that for disabled children) applicable to staff in the Professional and higher categories, recommended by ICSC in its report for the year 2006[1] that would be approved by the General Assembly. **While the Committee has no objection in principle to increasing the level of education grant for the members of the Court and judges, for the reasons given in paragraph 9 above, it is of the view that all conditions of service should be considered together as part of the periodic review carried out by the General Assembly and not linked to any developments with regard to staff.**

[1] See *Official Records of the General Assembly, Sixty-first Session, Supplement No. 30* (A/61/30), para. 62.

Special allowance

12. The Committee notes the view of the Secretary-General that consideration should be given to increasing the special allowance of the President of the Court from $15,000 to $20,000, which would represent an increase of some 30 per cent over the current level of the allowance. A commensurate increase in the allowance of the Vice-President when acting as President would result in the daily subsistence allowance of the Vice-President being increased from $94 per day to $125 per day, subject to a maximum of $12,500 per year (paras. 85-86). The Committee notes that this increase is requested in order to bring the rate of the special allowance of the President and Vice-President up to the 10-per cent level applied at ICJ.

13. **The Committee is not convinced by the argument put forward to increase the level of the special allowance for the President and for the Vice-President when acting as President; additional resource requirements should be justified on the basis of real needs and expenditure patterns. Accordingly, it recommends against the proposal.**

Travel and subsistence

14. The Committee notes that the travel and subsistence regulations approved by the General Assembly in its resolution 37/240 of 21 December 1982 (art. 1, para. 2) provide for first class accommodation for ICJ judges. The Committee points out that in the period since that resolution was adopted, standards of accommodation have evolved considerably. First class air travel is now restricted to a limited number of cases, and most senior officials are authorized travel at "the class immediately below first class" (ST/AI/2000/20). This change has occurred at the same time that market offers for business class travel have increased, and even replaced, in some cases, first class travel.

15. **In the light of this trend, the Committee is of the opinion that the travel and subsistence regulations approved for ICJ by the General Assembly in 1982 should be reviewed and updated in line with the current standards of the Organization.**

Pensions

16. In his previous report (A/C.5/59/2), the Secretary-General indicated that consideration should be given to applying a floor/ceiling mechanism to pensions in payment to former judges and their survivors residing in the euro zone countries to protect the level of their pensions. However, the Committee was of the opinion that the approach proposed would be too narrow, taking into account that the Registrar of the Court, in the letter addressed to the Secretariat in April 2004, had indicated the drastic deterioration in value that often results "both in Europe and other non-United States dollar zones" (see A/C.5/59/2, para. 44). Accordingly, the Committee recommended further elaboration on this proposal, including consideration of other options that could protect the pensions in payment to former judges and their survivors. The Committee also suggested that the Secretariat should avail itself of the experience of ICSC in applying floor/ceiling arrangements to salaries and requested that the results of such a review be presented to the General Assembly at its resumed fifty-ninth session (see A/59/557, paras. 10-11). That report was not submitted at that time, but was included in the subsequent report (A/61/554).

17. In section III of its resolution 59/282, the Assembly requested the Secretary-General to submit a comprehensive report on the protection of pensions in payment to former judges and their survivors as well as on the differences between the pension benefits of the judges of ICTY and ICTR, on the one hand, and the members of ICJ, on the other. Matters related to retirement benefits are discussed in paragraphs 93 to 134 of the report of the Secretary-General.

18. With respect to the protection of the level of pensions in payment, the Secretary-General indicates in paragraphs 129 to 134 that, following his review of the currency protection mechanisms used by ICSC (floor/ceiling) and the United Nations Joint Staff Pension Fund (two-track system), he had concluded that their inherent complexity rendered them unsuitable for the administration of the small number of pensions and survivor benefits being administered, currently a total of 50. Instead of the floor/ceiling mechanism initially envisaged, he proposes to apply a 36-month average exchange rate. Under this procedure, retirees and survivors residing in non-United States dollar countries would be given the option to request, on an annual basis at six-month intervals, conversion of their monthly pension benefit into another currency using the latest available 36-month average exchange rate established by the Pension Fund. He indicates that, while this option offers minimal protection against the continued weakness of the United States dollar, the application of a 36-month average exchange rate would result in stabilizing the operational rate of exchange and would constitute an improvement over the present system.

19. **The Committee fully understands the need for simplified procedures for administering a small number of cases. At the same time, care should be taken to adopt procedures that are sustainable and do not require frequent revision. The Committee recommends that the method proposed be adopted, on the understanding that retirees and survivors would be given a one-time option to request conversion of their pension into another currency, rather than on an annual basis (see A/61/554, para. 131).**

20. Concerning retirement benefits, the Committee notes that the retirement pension for the members of ICJ is at half the base annual salary, exclusive of allowances, for a full nine-year term, with a proportional reduction for a judge who has not completed a full term. There is no increase in pension benefit for re-elected judges. Furthermore, the pension scheme is non-contributory. As for the judges of ICTY and ICTR, the benefit is based on that applicable to the members of ICJ and is also non-contributory; it is prorated to account for the difference in length in the terms of appointment; namely, nine years for the members of ICJ and four years for the judges of the two Tribunals, who are elected for a term of four years and may be re-elected. For an annual salary of $170,080, the pension benefit of the members of ICJ having served a full nine-year term would be $85,040. However, in the case of the judges of ICTY and ICTR the benefit is capped at $37,796 if the judge has served for a full four-year term, and will not be increased even if the judge is re-elected.

21. In paragraph 96 of the report, the Secretary-General indicates that he "shares the concerns expressed by two Tribunals that the existing disparity between the pension benefits of the judges of the Tribunals and of the judges of the ICJ results in a discrimination against the judges of the Tribunals not warranted by the ICTY or the ICTR statute". This disparity is addressed in annex IV and annex V of the report

of the Secretary-General, which contain letters from the Presidents and Registrars of ICTY and ICTR to the Secretary-General on this subject.

22. In paragraph 95, the President and the Registrar of ICTY, as well as the President and the Registrar of ICTR, propose that annex II to General Assembly resolution 58/264 be amended to determine the pension benefit on the basis of actual years of service of the judges of ICTY and ICTR.

23. **The question of the retirement benefits of the members of ICJ and of the judges of ICTY and ICTR is one of long standing. The Committee believes that the pension benefits of the judges of ICTY and ICTR should be decided by the General Assembly.**

Annex

Monthly salary of judges serving in The Hague and in Arusha

Year	*Month*	*Salary of judges serving in Arusha, United States dollars*	*Salary of judges serving in The Hague, euros*	*United States dollar equivalent of salary paid in The Hague*
2004	January	13 333	13 696	17 099
	February	13 333	13 696	17 035
	March	13 333	13 696	17 035
	April	13 333	13 696	16 702
	May	13 333	13 696	16 227
	June	13 333	13 696	16 784
	July	13 333	13 696	16 682
	August	13 333	13 696	16 481
	September	13 333	13 696	16 481
	October	13 333	13 696	16 867
	November	13 333	13 696	17 425
	December	13 333	13 696	18 164
	Total 2004	**160 000**	**164 352**	**202 984**
2005	January	14 173	14 559	19 754
	February	14 173	14 559	19 031
	March	14 173	14 559	19 232
	April	14 173	14 559	18 883
	May	14 173	14 559	18 834
	June	14 173	14 559	17 541
	July	14 173	14 559	17 562
	August	14 173	14 559	17 604
	September	14 173	14 559	17 755
	October	14 173	14 559	17 499
	November	14 173	14 559	17 028
	December	14 173	14 559	17 128
	Total 2005	**170 080**	**174 706**	**217 851**
2006	January	14 173	14 559	17 229
	February	14 173	14 559	17 604
	March	14 173	14 559	17 250
	April	14 173	14 559	17 604
	May	14 173	14 559	18 569
	June	14 173	14 559	18 713
	July	14 173	14 559	18 259

06-64568

Year	*Month*	*Salary of judges serving in Arusha, United States dollars*	*Salary of judges serving in The Hague, euros*	*United States dollar equivalent of salary paid in The Hague*
	August	14 173	14 559	18 570
	September	14 173	14 559	18 665
	October	14 173	14 559	18 476
	November	14 173	14 559	18 523